

Item #: _____

Prepared by: Craig E. Willis
Assistant County Attorney

Approved by: Brian L. Kuhn
County Attorney

RESOLUTION APPROVING A COMPLAINT AGAINST MORTGAGE LENDING INSTITUTIONS WHO HAVE PARTICIPATED IN UNLAWFUL, IRRESPONSIBLE, UNFAIR, DECEPTIVE, AND DISCRIMINATORY LENDING PRACTICES AS REQUIRED BY A RESOLUTION ADOPTED AS ITEM NO. 25 ON DECEMBER 22, 2008; AND AUTHORIZING THE COUNTY MAYOR TO ENGAGE OUTSIDE COUNSEL ON A CONTINGENCY FEE BASIS, TO ENGAGE A NON-PROFIT ORGANIZATION THAT PROVIDES LEGAL SERVICES, AND TO PROVIDE IN-KIND SERVICES TO, AND PAY A PORTION OF THE REASONABLE FEES, COSTS AND EXPENSES INCURRED BY, SAID NON-PROFIT ORGANIZATION IF NECESSARY. SPONSORED BY COMMISSIONER J. W. GIBSON, II.

WHEREAS, by adoption of Item No. 25 on December 22, 2008, a copy of which is attached hereto and incorporated herein by reference, the Shelby County Board of Commissioners approved a resolution authorizing the County to participate with the City of Memphis and/or the State of Tennessee in pursuing litigation targeted at mortgage lending institutions who have participated in unlawful, irresponsible, unfair, deceptive, and discriminatory lending practices which have resulted in a disproportionately high rate of foreclosures in the ethnic minority neighborhoods of Memphis and Shelby County causing substantial and irreparable damage to these neighborhoods; and

WHEREAS, as required by said resolution, the County Attorney submits the Complaint attached hereto and incorporated herein by reference for approval; and

WHEREAS, upon further legal research and analysis, the Shelby County Attorney advises that it is prudent and in the interest of the public welfare that legal action be swiftly brought against several national mortgage lending institutions; and

WHEREAS, the Shelby County Attorney also advises that it is prudent and in the interest of the public welfare that appropriate outside counsel be engaged on a contingency fee basis and to engage a non-profit organization that provides legal services for the purpose of swiftly initiating this litigation and to vigorously prosecute this action at trial, including interlocutory appeals, if any; and

WHEREAS, the Shelby County Board of Commissioners desires to proceed with all steps necessary to bring about such litigation in conjunction with the City of Memphis and the State of Tennessee, should they desire to join in the litigation, along with appropriate outside counsel and a non-profit organization that provides legal services engaged by the County Mayor.

WHEREAS, Shelby County is authorized to fully collaborate with the City of Memphis and/or the State of Tennessee in pursuing litigation targeted at mortgage lending institutions that have participated in such unlawful, irresponsible, unfair, deceptive and discriminatory lending practices, Shelby County is hereby authorized to swiftly move forward independently with this litigation, if necessary, the public welfare requiring it.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF SHELBY COUNTY, TENNESSEE, That the Complaint submitted by the County Attorney, a summary of which is attached hereto and incorporated herein by reference, be and is hereby approved.

BE IT FURTHER RESOLVED, That the County Mayor be and is hereby authorized to engage outside counsel to swiftly initiate litigation and vigorously prosecute an action of any form at trial in any forum, including interlocutory appeals, if any, on a contingency fee basis, against any and all predatory national mortgage lenders that have committed unlawful,

irresponsible, unfair, deceptive, and/or discriminatory lending practices that have resulted in disproportionately high rate of foreclosures in the Memphis and Shelby County ethnic minority neighborhoods.

BE IT FURTHER RESOLVED, That the County Mayor be and is hereby authorized to engage a non-profit organization that provides legal services to assist in the prosecution of such litigation, to provide in-kind services for the County Attorney's Office in the formulation, initiation and prosecution of such litigation, and to pay a portion the reasonable fees, costs and expenses incurred by said non-profit organization if necessary.

BE IT FURTHER RESOLVED, That the County Attorney's Office be and is hereby directed to continually report back to the County Commission on a routine and regular basis as to any and all progress relative to this litigation.

BE IT FURTHER RESOLVED, That the County Attorney's Office be and is hereby authorized to move forward independently with this litigation with the assistance of outside counsel if the Memphis City Council does not adopt or pass, and the Mayor of the City of Memphis does not approve by June 10, 2009, a resolution authorizing the City of Memphis to join in the agreement with outside counsel for the provision of legal services in the litigation against these mortgage lending institutions on a contingency fee basis as authorized above.

BE IT FURTHER RESOLVED, That the County Attorney's Office shall seasonably notify the County Commission before filing the lawsuit if there are any local parties named as defendants in the litigation against mortgage lending institutions authorized hereby.

BE IT FURTHER RESOLVED, That the County Attorney's Office shall notify the County Commission within thirty (30) days, and before filing the lawsuit, if additional funds, other than the amount hereby approved, are required to be expended for the prosecution of the litigation against these mortgage lending institutions.

BE IT FURTHER RESOLVED, That the County Attorney's Office be and is hereby authorized to move forward independently with this litigation with the assistance of outside counsel as authorized above, if necessary, and is authorized to fully collaborate with the City of Memphis and/or the State of Tennessee should either pursue legal action against these mortgage lending institutions.

BE IT FURTHER RESOLVED, that this Resolution shall take effect immediately, the public welfare requiring it.

A C Wharton, Jr., County Mayor

Date: _____

ATTEST:

Clerk of County Commission

ADOPTED: _____